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Attorneys for Defendant  
KAISER FOUNDATION HEALTH PLAN, INC.

UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK STEELE, an individual, and DAN  
ROYSE, an individual, JULIE TEAGUE, an  
individual, and JERAHMEEL CAPISTRANO,  
on behalf of themselves, and on behalf of all  
persons similarly situated,

Plaintiffs,

v.

KAISER FOUNDATION HEALTH PLAN,  
INC., a California Corporation, and Does 1 to  
10,

Defendants.

Case No. C07-05743 BZ

**ANSWER TO CLASS AND  
COLLECTIVE ACTION COMPLAINT**

Defendant KAISER FOUNDATION HEALTH PLAN, INC. ("Defendant") hereby  
submits the foregoing Answer to the Complaint filed by MARK STEELE, DAN ROYSE, JULIE  
TEAGUE and JERAHMEEL CAPISTRANO ("Plaintiffs") as follows:

1. Answering Paragraph 1 of the Complaint, Defendant avers this Paragraph does  
not require a response.

1           2.     Denied.

2           3.     Denied.

3           4.     Answering Paragraph 4 of the Complaint, Defendant avers this Paragraph does  
4 not require a response.

5           5.     Answering Paragraph 5 of the Complaint, Defendant admits that the Court has  
6 subject matter jurisdiction over this matter and that the Court has supplemental jurisdiction over  
7 Plaintiffs' state law claims. Defendant denies the remaining allegations in Paragraph 5 of the  
8 Complaint.

9           6.     Answering Paragraph 6 of the Complaint, Defendant admits that venue is proper  
10 in this District, but denies the remaining allegations in Paragraph 6 of the Complaint.

11          7.     Defendant is without knowledge or information sufficient to form a belief as to  
12 the truth of the allegations contained in Paragraph 7 of the Complaint, and on that basis denies  
13 them.

14          8.     Defendant is without knowledge or information sufficient to form a belief as to  
15 the truth of the allegations contained in Paragraph 8 of the Complaint, and on that basis denies  
16 them.

17          9.     Defendant is without knowledge or information sufficient to form a belief as to  
18 the truth of the allegations contained in Paragraph 9 of the Complaint, and on that basis denies  
19 them.

20          10.    Defendant is without knowledge or information sufficient to form a belief as to  
21 the truth of the allegations contained in Paragraph 10 of the Complaint, and on that basis denies  
22 them.

23          11.    Answering Paragraph 11 of the Complaint, Defendant Kaiser Foundation Health  
24 Plan, Inc. ("KFHP") is a California nonprofit public benefit corporation which enrolls members  
25 and collects payments of dues. It contracts to provide members hospital services in California.  
26 Defendant denies the remaining allegations of this Paragraph of the Complaint.

27          12.    Answering Paragraph 12 of the Complaint, Defendant avers that this Paragraph  
28 does not require a response. Defendant further denies that it committed any unlawful actions

1 causing Plaintiffs to have suffered any losses or damages and denies every other allegation or  
2 implication of any wrongdoing or breach of duty on the part of Defendant.

3 13. Defendant denies that it committed any unlawful actions causing Plaintiffs to  
4 have suffered any losses or damages and denies every other allegation or implication of any  
5 wrongdoing or breach of duty on the part of Defendant. Defendant specifically states that its  
6 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
7 material herein, the parties to this action were exempt from the overtime compensation  
8 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
9 because they were employed in an administrative, executive or professional capacity within the  
10 meaning of the applicable wage order. Defendant is without knowledge or information sufficient  
11 to form a belief as to the truth of the remaining allegations contained in Paragraph 13 of the  
12 Complaint, and on that basis denies them. Defendant denies the implication that it is in violation  
13 of any legal duty.

14 14. Defendant is without knowledge or information sufficient to form a belief as to  
15 the truth of the allegations contained in Paragraph 14 of the Complaint, and on that basis denies  
16 them.

17 15. Defendant is without knowledge or information sufficient to form a belief as to  
18 the truth of the allegations contained in Paragraph 15 of the Complaint, and on that basis denies  
19 them.

20 16. Defendant is without knowledge or information sufficient to form a belief as to  
21 the truth of the allegations contained in Paragraph 16 of the Complaint, and on that basis denies  
22 them. Defendant further denies that it committed any unlawful actions causing Plaintiffs to have  
23 suffered any losses or damages and denies every other allegation or implication of any  
24 wrongdoing or breach of duty on the part of Defendant and specifically states that its failure to  
25 pay overtime was not unlawful, unfair or fraudulent because at all times relevant and material  
26 herein, the parties to this action were exempt from the overtime compensation requirements of  
27 the California Labor Code and the Industrial Welfare Commission Wage Order because they  
28

1 were employed in an administrative, executive or professional capacity within the meaning of the  
2 applicable wage order.

3 17. Answering Paragraph 17 of the Complaint, Defendant avers that this Paragraph  
4 does not require a response. Defendant further denies that it committed any unlawful actions  
5 causing Plaintiffs to have suffered any losses or damages and denies every other allegation or  
6 implication of any wrongdoing or breach of duty on the part of Defendant and specifically states  
7 that its failure to pay overtime was not unlawful, unfair or fraudulent because at all times  
8 relevant and material herein, the parties to this action were exempt from the overtime  
9 compensation requirements of the California Labor Code and the Industrial Welfare Commission  
10 Wage Order because they were employed in an administrative, executive or professional  
11 capacity within the meaning of the applicable wage order.

12 18. Deny.

13 19. Deny.

14 20. Deny.

15 21. Deny.

16 22. Deny.

17 23. Deny.

18 24. Deny.

19 25. Deny.

20 26. Answering Paragraph 26 of the Complaint, Defendant Kaiser Foundation Health  
21 Plan, Inc. ("KFHP") is a California nonprofit public benefit corporation which enrolls members,  
22 collects payments of dues. It contracts to provide members hospital services in California.  
23 Defendant denies the remaining allegations of this Paragraph.

24 27. Defendant is without knowledge or information sufficient to form a belief as to  
25 the truth of the allegations contained in Paragraph 27 of the Complaint, and on that basis denies  
26 them. Defendant further denies that it committed any unlawful actions causing Plaintiffs to have  
27 suffered any losses or damages and denies every other allegation or implication of any  
28 wrongdoing or breach of duty on the part of Defendant and specifically states that its failure to

1 pay overtime was not unlawful, unfair or fraudulent because at all times relevant and material  
2 herein, the parties to this action were exempt from the overtime compensation requirements of  
3 the California Labor Code and the Industrial Welfare Commission Wage Order because they  
4 were employed in an administrative, executive or professional capacity within the meaning of the  
5 applicable wage order.

6 28. Defendant is without knowledge or information sufficient to form a belief as to  
7 the truth of the allegations contained in Paragraph 28 of the Complaint, and on that basis denies  
8 them. Defendant further denies that it committed any unlawful actions causing Plaintiffs to have  
9 suffered any losses or damages and denies every other allegation or implication of any  
10 wrongdoing or breach of duty on the part of Defendant and specifically states that its failure to  
11 pay overtime was not unlawful, unfair or fraudulent because at all times relevant and material  
12 herein, the parties to this action were exempt from the overtime compensation requirements of  
13 the California Labor Code and the Industrial Welfare Commission Wage Order because they  
14 were employed in an administrative, executive or professional capacity within the meaning of the  
15 applicable wage order.

16 29. Deny.

17 30. Deny.

18 31. Deny.

19 32. Paragraph 32 of the Complaint is a purported summary of the law which speaks  
20 for itself and the various provisions referenced must be read in their entirety. Insofar as  
21 Plaintiffs have inaccurately quoted or summarized any provision, Defendant denies the  
22 allegations of Paragraph 32. Defendant further denies that it committed any unlawful actions  
23 causing Plaintiffs to have suffered any losses or damages and denies every other allegation or  
24 implication of any wrongdoing or breach of duty on the part of Defendant and specifically states  
25 that its failure to pay overtime was not unlawful, unfair or fraudulent because at all times  
26 relevant and material herein, the parties to this action were exempt from the overtime  
27 compensation requirements of the California Labor Code and the Industrial Welfare Commission  
28

1 Wage Order because they were employed in an administrative, executive or professional  
2 capacity within the meaning of the applicable wage order.

3 33. Paragraph 33 of the Complaint is a purported summary of the law which speaks  
4 for itself and the various provisions referenced must be read in their entirety. Insofar as  
5 Plaintiffs have inaccurately quoted or summarized any provision, Defendant denies the  
6 allegations of Paragraph 33. Defendant further denies that it committed any unlawful actions  
7 causing Plaintiffs to have suffered any losses or damages and denies every other allegation or  
8 implication of any wrongdoing or breach of duty on the part of Defendant and specifically states  
9 that its failure to pay overtime was not unlawful, unfair or fraudulent because at all times  
10 relevant and material herein, the parties to this action were exempt from the overtime  
11 compensation requirements of the California Labor Code and the Industrial Welfare Commission  
12 Wage Order because they were employed in an administrative, executive or professional  
13 capacity within the meaning of the applicable wage order.

14 34. Deny.

15 35. Deny.

16 36. Deny.

17 37. Deny.

18 38. Defendant incorporates by reference, as if fully set forth herein, the responses to  
19 the allegations of Paragraphs 1 through 37, inclusive.

20 39. Answering Paragraph 39 of the Complaint, Defendant Kaiser Foundation Health  
21 Plan, Inc. ("KFHP") is a California nonprofit public benefit corporation which enrolls members,  
22 collects payments of dues. It contracts to provide members hospital services in California.  
23 Defendant denies the remaining allegations of this Paragraph.

24 40. Paragraph 40 of the Complaint is a purported summary of the law and various  
25 code sections. The statutory provisions speak for themselves and must be read in their entirety.  
26 Insofar as Plaintiffs have inaccurately quoted or summarized any provision of such code  
27 sections, Defendant denies the allegations of Paragraph 40.

1           41. Paragraph 41 of the Complaint is a purported summary of the law and various  
2 code sections. The statutory provisions speak for themselves and must be read in their entirety.  
3 Insofar as Plaintiffs have inaccurately quoted or summarized any provision of such code  
4 sections, Defendant denies the allegations of Paragraph 41.

5           42. Paragraph 42 of the Complaint is a purported summary of the law and various  
6 code sections. The statutory provisions speak for themselves and must be read in their entirety.  
7 Insofar as Plaintiffs have inaccurately quoted or summarized any provision of such code  
8 sections, Defendant denies the allegations of Paragraph 42.

9           43. Deny.

10          44. Deny.

11          45. Paragraph 45 of the Complaint is a purported summary of the law. Insofar as  
12 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
13 Paragraph 45.

14          46. Deny.

15          47. Paragraph 47 of the Complaint is a purported summary of the law. Insofar as  
16 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
17 Paragraph 47.

18          48. Paragraph 48 of the Complaint is a purported summary of the law. Insofar as  
19 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
20 Paragraph 48.

21          49. Paragraph 49 of the Complaint is a purported summary of the law. Insofar as  
22 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
23 Paragraph 49.

24          50. Paragraph 50 of the Complaint is a purported summary of the law. Insofar as  
25 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
26 Paragraph 50. Defendant further denies that it committed any unlawful actions causing Plaintiffs  
27 to have suffered any losses or damages and denies every other allegation or implication of any  
28 wrongdoing or breach of duty on the part of Defendant and specifically states that its failure to



1 pay overtime was not unlawful, unfair or fraudulent because at all times relevant and material  
2 herein, the parties to this action were exempt from the overtime compensation requirements of  
3 the California Labor Code and the Industrial Welfare Commission Wage Order because they  
4 were employed in an administrative, executive or professional capacity within the meaning of the  
5 applicable wage order.

6 51. Deny.

7 52. Deny.

8 53. Deny.

9 54. Deny.

10 55. Deny.

11 56. Deny.

12 57. Defendant denies that it committed any unlawful actions causing Plaintiffs to  
13 have suffered any losses or damages and denies every other allegation or implication of any  
14 wrongdoing or breach of duty on the part of Defendant and specifically states that its failure to  
15 pay overtime was not unlawful, unfair or fraudulent because at all times relevant and material  
16 herein, the parties to this action were exempt from the overtime compensation requirements of  
17 the California Labor Code and the Industrial Welfare Commission Wage Order because they  
18 were employed in an administrative, executive or professional capacity within the meaning of the  
19 applicable wage order.

20 58. Defendant incorporates by reference, as if fully set forth herein, the responses to  
21 the allegations of Paragraphs 1 through 57, inclusive.

22 59. Paragraph 59 of the Complaint is a purported summary of the law. Insofar as  
23 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
24 Paragraph 59.

25 60. Paragraph 60 of the Complaint is a purported summary of the law. Insofar as  
26 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
27 Paragraph 60.



1           61. Paragraph 61 of the Complaint is a purported summary of the law. Insofar as  
2 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
3 Paragraph 61.

4           62. Paragraph 62 of the Complaint is a purported summary of the law. Insofar as  
5 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
6 Paragraph 62.

7           63. Paragraph 63 of the Complaint is a purported summary of the law. Insofar as  
8 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
9 Paragraph 63.

10          64. Paragraph 64 of the Complaint is a purported summary of the law. Insofar as  
11 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
12 Paragraph 64.

13          65. Deny.

14          66. Paragraph 66 of the Complaint is a purported summary of the law. Insofar as  
15 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
16 Paragraph 66.

17          67. Paragraph 67 of the Complaint is a purported summary of the law. Insofar as  
18 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
19 Paragraph 67.

20          68. Paragraph 68 of the Complaint is a purported summary of the law. Insofar as  
21 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
22 Paragraph 68. Defendant further denies that it committed any unlawful actions causing Plaintiffs  
23 to have suffered any losses or damages and denies every other allegation or implication of any  
24 wrongdoing or breach of duty on the part of Defendant and specifically states that its failure to  
25 pay overtime was not unlawful, unfair or fraudulent because at all times relevant and material  
26 herein, the parties to this action were exempt from the overtime compensation requirements of  
27 the California Labor Code and the Industrial Welfare Commission Wage Order because they  
28

1 were employed in an administrative, executive or professional capacity within the meaning of the  
2 applicable wage order.

3         69. Deny. Defendant further denies that it committed any unlawful actions causing  
4 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
5 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
6 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
7 material herein, the parties to this action were exempt from the overtime compensation  
8 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
9 because they were employed in an administrative, executive or professional capacity within the  
10 meaning of the applicable wage order.

11         70. Deny.

12         71. Deny. Defendant further denies that it committed any unlawful actions causing  
13 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
14 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
15 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
16 material herein, the parties to this action were exempt from the overtime compensation  
17 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
18 because they were employed in an administrative, executive or professional capacity within the  
19 meaning of the applicable wage order.

20         72. Deny. Defendant further denies that it committed any unlawful actions causing  
21 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
22 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
23 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
24 material herein, the parties to this action were exempt from the overtime compensation  
25 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
26 because they were employed in an administrative, executive or professional capacity within the  
27 meaning of the applicable wage order.

1           73. Deny. Defendant further denies that it committed any unlawful actions causing  
2 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
3 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
4 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
5 material herein, the parties to this action were exempt from the overtime compensation  
6 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
7 because they were employed in an administrative, executive or professional capacity within the  
8 meaning of the applicable wage order. Further, Defendant states that it did not willfully fail to  
9 comply with the compensation provisions of the California Labor Code, Cal. Labor Code § 200,  
10 et seq., but rather acted in good faith and had reasonable grounds for believing that it did not  
11 violate the compensation provisions of the California Labor Code, Cal. Labor Code § 200, et seq.

12           74. Defendant denies that it committed any unlawful actions causing Plaintiffs to  
13 have suffered any losses or damages and denies every other allegation or implication of any  
14 wrongdoing or breach of duty on the part of Defendant and specifically states that its failure to  
15 pay overtime was not unlawful, unfair or fraudulent because at all times relevant and material  
16 herein, the parties to this action were exempt from the overtime compensation requirements of  
17 the California Labor Code and the Industrial Welfare Commission Wage Order because they  
18 were employed in an administrative, executive or professional capacity within the meaning of the  
19 applicable wage order.

20           75. Deny. Defendant further denies that it committed any unlawful actions causing  
21 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
22 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
23 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
24 material herein, the parties to this action were exempt from the overtime compensation  
25 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
26 because they were employed in an administrative, executive or professional capacity within the  
27 meaning of the applicable wage order. Further, Defendant states that it did not willfully fail to  
28 comply with the compensation provisions of the California Labor Code, Cal. Labor Code § 200,

1 et seq., but rather acted in good faith and had reasonable grounds for believing that it did not  
2 violate the compensation provisions of the California Labor Code, Cal. Labor Code § 200, et seq.

3 76. Defendant incorporates by reference, as if fully set forth herein, the responses to  
4 the allegations of Paragraphs 1 through 75, inclusive.

5 77. Paragraph 77 of the Complaint is a purported summary of the law. Insofar as  
6 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
7 Paragraph 77.

8 78. Paragraph 78 of the Complaint is a purported summary of the law. Insofar as  
9 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
10 Paragraph 78.

11 79. Paragraph 79 of the Complaint is a purported summary of the law. Insofar as  
12 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
13 Paragraph 79.

14 80. Defendant is without knowledge or information sufficient to form a belief as to  
15 the truth of the allegations contained in Paragraph 80 of the Complaint, and on that basis denies  
16 them.

17 81. Deny. Defendant further denies that it committed any unlawful actions causing  
18 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
19 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
20 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
21 material herein, the parties to this action were exempt from the overtime compensation  
22 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
23 because they were employed in an administrative, executive or professional capacity within the  
24 meaning of the applicable wage order.

25 82. Defendant incorporates by reference, as if fully set forth herein, the responses to  
26 the allegations of Paragraphs 1 through 81, inclusive.

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1           83. Paragraph 83 of the Complaint is a purported summary of the law. Insofar as  
2 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
3 Paragraph 83.

4           84. Paragraph 84 of the Complaint is a purported summary of the law. Insofar as  
5 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
6 Paragraph 84.

7           85. Paragraph 85 of the Complaint is a purported summary of the law. Insofar as  
8 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
9 Paragraph 85.

10          86. Paragraph 86 of the Complaint is a purported summary of the law. Insofar as  
11 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
12 Paragraph 86.

13          87. Deny.

14          88. Deny. Defendant further denies that it committed any unlawful actions causing  
15 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
16 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
17 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
18 material herein, the parties to this action were exempt from the overtime compensation  
19 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
20 because they were employed in an administrative, executive or professional capacity within the  
21 meaning of the applicable wage order.

22          89. Defendant incorporates by reference, as if fully set forth herein, the responses to  
23 the allegations of Paragraphs 1 through 88, inclusive.

24          90. Paragraph 90 of the Complaint is a purported summary of the law. Insofar as  
25 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
26 Paragraph 90.

27          91. Deny.  
28

1           92. Deny. Defendant further denies that it committed any unlawful actions causing  
2 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
3 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
4 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
5 material herein, the parties to this action were exempt from the overtime compensation  
6 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
7 because they were employed in an administrative, executive or professional capacity within the  
8 meaning of the applicable wage order.

9           93. Defendant incorporates by reference, as if fully set forth herein, the responses to  
10 the allegations of Paragraphs 1 through 92, inclusive.

11           94. Deny.

12           95. Paragraph 95 of the Complaint is a purported summary of the law. Insofar as  
13 Plaintiffs have inaccurately quoted or summarized the law, Defendant denies the allegations of  
14 Paragraph 95.

15           96. Deny. Defendant further denies that it committed any unlawful actions causing  
16 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
17 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
18 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
19 material herein, the parties to this action were exempt from the overtime compensation  
20 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
21 because they were employed in an administrative, executive or professional capacity within the  
22 meaning of the applicable wage order.

23           97. Deny. Defendant further denies that it committed any unlawful actions causing  
24 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
25 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
26 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
27 material herein, the parties to this action were exempt from the overtime compensation  
28 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order



1 because they were employed in an administrative, executive or professional capacity within the  
2 meaning of the applicable wage order.

3 98. Deny. Defendant further denies that it committed any unlawful actions causing  
4 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
5 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
6 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
7 material herein, the parties to this action were exempt from the overtime compensation  
8 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
9 because they were employed in an administrative, executive or professional capacity within the  
10 meaning of the applicable wage order.

11 99. Deny. Defendant further denies that it committed any unlawful actions causing  
12 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
13 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
14 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
15 material herein, the parties to this action were exempt from the overtime compensation  
16 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
17 because they were employed in an administrative, executive or professional capacity within the  
18 meaning of the applicable wage order.

19 100. Deny. Defendant further denies that it committed any unlawful actions causing  
20 Plaintiffs to have suffered any losses or damages and denies every other allegation or implication  
21 of any wrongdoing or breach of duty on the part of Defendant and specifically states that its  
22 failure to pay overtime was not unlawful, unfair or fraudulent because at all times relevant and  
23 material herein, the parties to this action were exempt from the overtime compensation  
24 requirements of the California Labor Code and the Industrial Welfare Commission Wage Order  
25 because they were employed in an administrative, executive or professional capacity within the  
26 meaning of the applicable wage order.

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1                                   **RESPONSE TO PRAYER FOR RELIEF**

2           In Response to Paragraphs A through K of the Prayer for Relief, Defendant denies that  
3   Plaintiffs are entitled to any of the relief which Plaintiffs seek in those Paragraphs.

4                                   **AFFIRMATIVE DEFENSES**

5           Defendant, by and through its attorneys, and pursuant to Rule 8 of the Federal Rules of  
6   Civil Procedure, states as follows for its affirmative defenses to Plaintiffs' Complaint:  
7

8                                   **FIRST AFFIRMATIVE DEFENSE**

9           As its first affirmative defense, and without prejudice to its denials and other statements  
10   of his pleadings, Defendants allege that Plaintiffs' Complaint and each purported cause of action  
11   asserted against Defendants therein fails to set forth facts sufficient to constitute a claim upon  
12   which relief can be granted.  
13

14                                  **SECOND AFFIRMATIVE DEFENSE**

15           Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations,  
16   including but not limited to, Code of Civil Procedure sections 338, 339, and 340 and California  
17   Business & Professions Code section 17208.

18                                  **THIRD AFFIRMATIVE DEFENSE**

19           Plaintiffs have delayed inexcusably and unreasonably in the filing of this action causing  
20   substantial prejudice to Defendant, and thus, Plaintiffs' claims are barred by the equitable  
21   doctrine of laches.

22                                  **FOURTH AFFIRMATIVE DEFENSE**

23           Plaintiffs' Complaint, and each and every cause of action alleged therein, is barred by the  
24   doctrines of waiver and estoppel.

25                                  **FIFTH AFFIRMATIVE DEFENSE**

26           Plaintiffs' Complaint, and each and every cause of action alleged therein, is barred by the  
27   doctrine of unclean hands.  
28

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint is barred because Defendant's failure to pay overtime was not unlawful, unfair or fraudulent. At all times relevant and material herein, the parties to this action were exempt from the overtime compensation requirements of the California Labor Code and the Industrial Welfare Commission Wage Order because the putative class members were employed in an administrative, executive or professional capacity within the meaning of the applicable wage order.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are not entitled to any penalty award under section 203 of the California Labor Code since, at all times relevant and material herein, Defendant did not willfully fail to comply with the compensation provisions of the California Labor Code, Cal. Labor Code § 200, et seq., but rather acted in good faith and had reasonable grounds for believing that it did not violate the compensation provisions of the California Labor Code, Cal. Labor Code § 200, et seq.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendant cannot be held liable for any of the claims asserted in the Complaint because it never employed Plaintiffs nor any of the putative class members.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred to the extent they failed to exhaust their mandatory administrative remedies under the applicable statute(s).

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims for injunctive relief are barred because the Plaintiffs have an adequate and complete remedy at law and/or Plaintiffs cannot make the requisite showing to obtain injunctive relief in a labor dispute under California Labor Code section 1138.1, et seq.

**PRAYER**

Wherefore, Defendant prays for judgment as follows:

1. That Plaintiffs takes nothing for the Complaint;
2. That judgment be entered in favor of Defendant and against Plaintiffs on all causes of action;

- 1           3. That Defendant be awarded reasonable attorneys' fees according to proof;  
2           4. That Defendant be awarded the costs of suit incurred herein; and  
3           5. That Defendant be awarded such other and further relief as the Court may deem  
4 appropriate.

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6 DATED: December 26, 2007

SEYFARTH SHAW LLP

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8 By /s/Kari Erickson Levine  
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9 Attorneys for Defendant KAISER  
FOUNDATION HEALTH PLAN, INC.

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